FOR ARGUMENT

No. 76-864

In the Supreme Court of the United States

OCTOBER TERM, 1977

CITY OF LAFAYETTE, LOUISIANA AND CITY OF PLAQUEMINE, LOUISIANA, PETITIONERS

v.

LOUISIANA POWER & LIGHT COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

WADE H. MCCREE, JR.,
Solicitor General.

JOHN H. SHENEFIELD,
Acting Assistant Attorney General.

BARRY GROSSMAN,
CATHERINE G. O'SULLIVAN,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

CITATIONS

Page

Cases—continued:

Page

Cases—continued:

Constitution and statutes:

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QUESTION PRESENTED

Whether the federal antitrust laws prohibit some forms of anticompetitive conduct by municipal corporations.

INTEREST OF THE UNITED STATES

The United States has the primary responsibility for enforcing the federal antitrust laws. The question whether those laws apply to anticompetitive conduct that is carried out or arguably authorized by States and their subdivision is of considerable practical importance, and in many instances will determine whether the United States will take action to enforce the antitrust laws and, if so, with what success. The Court invited the United States to participate in briefing and arguing the first case raising the question of the application of the antitrust laws to state action (*Parker* v. *Brown*, 317 U.S. 341), and the United States has participated as *amicus*

curiae in all of this Court's recent cases that raised related issues. See *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773; *Cantor* v. *Detroit Edison Co.*, 428 U.S. 579; *Bates* v. *State Bar of Arizona*, No. 76-316, decided June 27, 1977.

STATEMENT

Petitioners, two municipal corporations in Louisiana, operate electric utility systems. They commenced this suit in the United States District Court for the Eastern District of Louisiana, alleging that respondent and three other private electric utilities had violated the federal antitrust laws (A. 6-15). Respondent filed a counterclaim that, as amended (A. 18-20, 24-25, 33-34), alleged that one of the petitioners had violated the federal antitrust laws by agreeing to provide customers outside its city limits with gas and water only if the customers purchased all of their electricity from that petitioner. Respondent sought damages and an injunction against a continuation of the practice (A. 34).

Respondent also alleged that petitioners conspired with an electric power cooperative to engage in vexatious litigation designed to forestall respondent from building a nuclear power generation facility; that petitioners had used covenants in debentures to forbid competition within city limits; and that petitioners had conspired with an electric power cooperative and another private company to provide service for a period longer than allowed by state law. Respondents sought only damages with respect to these allegations.

Petitioners moved to dismiss the counterclaim (A. 22, 42-43). They contended that the federal antitrust laws do not apply to them because they are subdivisions of a State. The district court reluctantly agreed (A. 44-48), believing that the question had been settled by a previous case in the court of appeals. It certified pursuant to Fed.

R. Civ. P. 54(b) that final judgment should be entered on the counterclaim (A. 48-49), and respondent immediately appealed.[1]

The court of appeals reversed (A. 51-58). It concluded that a subdivision of a State is not always exempt from the operation of the federal antitrust laws; the proper question, the court held, is "whether the state legislature contemplated a certain type of anticompetitive restraint" (A. 54) to be imposed by a municipality.

The court of appeals remanded the case to the district court so that it could determine in the first instance whether the Louisiana state legislature contemplated that petitioners might act as they are alleged to have done. The court made it clear that petitioners need not "point to an express statutory mandate for each act which is alleged to violate the antitrust laws.* * * Whether a governmental body's actions are comprehended within the powers granted to it by the legislature is * * * a determination which can be made only under the specific facts in each case." (A. 54, 55-56). The court of appeals explained that if a district court ascertains, "from the authority given a governmental entity to operate in a particular area, that the legislature contemplated the kind of action complained of" (A. 54-55), then it should conclude that the federal antitrust laws do not apply.

SUMMARY OF ARGUMENT

Petitioners contend that the antitrust laws do not apply to any acts of municipalities. We disagree. There is a presumption against implicit antitrust exemptions, and petitioners' position serves neither the purpose of the antitrust laws nor the purpose of the limited exemption for the acts of a State.

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[1] See *Liberty Mutual Insurance Co.* v. *Wetzel*, 424 U.S. 737, 742-743.

The Court has held that the antitrust laws do not prohibit considered decisions by a State, as sovereign, to substitute regulation for competition and to implement those decisions. This principle should apply to decisions of municipalities authorized by the State no less than to decisions of the State itself. Municipalities may act as agents of States, and a rule uniformly applying the antitrust laws to all municipal action would deprive the States of the right to delegate authority in a way that the States have found to be useful. But this does not lead to the conclusion that the antitrust laws are inapplicable to all municipal action. This Court's cases, far from holding that the antitrust laws do not apply to governmental action, disclose that the important question is the degree of state involvement in a decision to supplant competition with regulation.

The States' regulatory authority is fully protected by a rule that the antitrust laws do not apply to properly authorized municipal regulation. Any other rule would require federal policy to yield to a variety of local decisions that may have little to do with an articulable state policy and that even may be contrary to state policy. Municipalities are not themselves sovereign, and they traditionally have been held to the same rules as private entrepreneurs when they engage in proprietary enterprises. There is no reason to suppose that Congress intended to afford municipalities greater immunity than they had at common law.

Petitioners' argument that the proprietary activities of local governments, like their other activities, must be governed exclusively through the political process rings hollow in a case like this. Respondent alleged that one petitioner engaged in anticompetitive activity outside its borders. The anticompetitive activity therefore had effects

on people who could not vote, and the city had every interest to seek to exploit the nonvoters, much as private monopolists seek to profit from nonshareholders.

We submit, in sum, that there is a significant difference between a situation in which a municipality imposes a public regulatory measure and a situation in which public officials violate the antitrust laws in business ventures. In the former situation, a showing that the challenged competitive restraint was within the scope of authority delegated by the state legislature would make out a defense; in the latter, the defendants must demonstrate that their conduct was compelled by the State acting as sovereign.

ARGUMENT

THE FEDERAL ANTITRUST LAWS APPLY TO MUNICIPAL ACTIVITIES THAT ARE NOT AUTHORIZED BY THE STATE AS SOVEREIGN

Petitioners contend that because they are municipalities the federal antitrust laws do not apply to them. In petitioners' view, it makes no difference that they may be engaged in "proprietary" activities, that the State has not manifested an intent to permit them to engage in the sorts of activities alleged to violate the antitrust laws, or that their activities may not serve any ascertainable state purpose. It is enough, they argue, that they are governmental bodies. We disagree. "[T]here is a heavy presumption against implicit exemptions" from the antitrust laws (*Goldfarb* v. *Virginia State Bar*, 421 U.S. 773, 787), and petitioners' position serves neither the purpose of the antitrust laws nor the purpose of the limited exemption for acts of the States.

A. Petitioners' status as governmental bodies is not by itself a sufficient condition for antitrust exemption

Petitioners' argument rests on *Parker* v. *Brown*, 317 U.S. 341, which held that a collaborative raisin marketing program that "derived its authority and its efficacy from the legislative command of the state" (317 U.S. at 350) did not violate the antitrust laws. The Court carefully scrutinized the origin and nature of the program; it found that the program was a considered expression of the will of the state legislature (*id.* at 352), and that an injunction restraining the program would have forbidden the legislature to exercise the sovereign power of the State (*id.* at 346-348, 350-351, 352).[2] Under these circumstances, the Court concluded, the State, "as sovereign, imposed the restraint as an act of government which the Sherman Act did not undertake to prohibit" (*id.* at 352).

Parker involved a comprehensive program of business regulation that applied to all of the State's raisin growers. The Court pointed out that a program of regulation was unlike participation by the State in a private conspiracy in restraint of trade (317 U.S. at 351-352).[3] Similarly, the Court has held in *Bates* v. *State Bar of Arizona*, No. 76-316, decided June 27, 1977, that a State acting as sovereign does not violate the antitrust laws by regulating the conduct of attorneys. In *Bates*, as in *Parker*, the highest authority of a State had made and implemented a considered decision to substitute regulation for competition.

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[2]See also *Cantor* v. *Detroit Edison Co.*, 428 U.S. 579, 591 n. 24 (plurality opinion).

[3]The Court cited with approval (317 U.S. at 352) *Union Pacific R.R.* v. *United States*, 313 U.S. 450, which held that a city violated a federal statute when it offered certain concessions to merchants who agreed to move their business to the city's new marketplace. Although the city acted to promote what it perceived to be the economic welfare of the community, the Court held that it had joined a private conspiracy initiated by a railroad and consequently was exposed to sanctions under federal law.

Bates made clear what had been implicit in *Parker*: the extent to which the federal antitrust laws apply to governmental action depends on the nature of the governmental decision involved. The Court emphasized that the Supreme Court of Arizona, which had formulated the program of regulation, was "the ultimate body wielding the State's power over the practice of law" (slip op. 8) and that the restraint was uniformly imposed by the sovereign power of the State. The program of regulation not only was an exercise of traditional regulatory power but also represented "a clear articulation of the State's policy with regard to professional behavior" (slip op. 10). The rules were subject to continuing reevaluation by a detached body (*ibid.*), and the Court explained (slip op. 11) that "[o]ur concern that federal policy is being unnecessarily and inappropriately subordinated to state policy is reduced in such a situation; we deem it significant that the state policy is so clearly and affirmatively expressed and that the State's supervision is so active."

Parker and *Bates* establish that a considered decision by the State to use its governmental powers to substitute a system of regulation for the forces of free competition, and its implementation of that decision, do not violate the federal antitrust laws. Petitioners contend that *Parker* stands for a much broader principle: that no activity of a governmental body can violate the antitrust laws. But the care with which the Court scrutinized the activity in *Bates* undercuts petitioners' arguments; the involvement of a governmental body is a necessary but not a sufficient condition of this form of antitrust immunity.

The simplistic position advanced by petitioners is at odds with several other decisions of this Court applying federal antitrust laws to activities supported by governmental bodies. For example, *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384, holds that States

may not authorize private parties to enter into anticompetitive contracts; a State may establish a system of regulation, but it may not extend a blanket antitrust immunity to otherwise unregulated parties. Moreover, even within the traditionally regulated professions and industries, the federal antitrust laws have substantial importance, as the Court held in *Cantor* v. *Detroit Edison Co.*, 428 U.S. 579, and *Goldfarb* v. *Virginia State Bar*, *supra*.

In *Cantor* a private utility filed a tariff with a public utilities commission; once the tariff had been approved, the utility was compelled to adhere to its provisions. The Court looked beyond the fact of governmental compulsion and concluded that the activity involved had been initiated by a private party and did not serve to carry out a governmental policy; the State "had no independent regulatory interest" (*Bates*, *supra*, slip op. 9) in the course pursued by the utility company, and the antitrust laws were applied to the utility's actions.

In *Goldfarb* the Court held that the antitrust laws prohibited the establishment of minimum fee schedules by the bar. The bar traditionally has been a regulated profession, and the State Bar, which established the fee schedules, was for at least some purposes a "state agency by law" (421 U.S. at 790).[4] Yet the Court concluded that the federal antitrust laws applied because the "State acting as a sovereign" (*Bates*, *supra*, slip op. 8) did not command the establishment of minimum fees. It explained (421 U.S. at 790, emphasis added): "The *threshold* inquiry in determining if an anticompetitive activity is state action of the type the Sherman Act was not meant to proscribe is whether the activity is *required* by the State *acting as sovereign*."

[4]Petitioners contend (Br. 5, 10-12) that the Court treated the State Bar in *Goldfarb* as a private party, and that the case therefore is not helpful in determining the application of the antitrust laws to governmental units such as municipalities. But the Court recognized that the State Bar was a unit of government for *some* purposes (421 U.S. at 789-790); it was simply not acting in a governmental capacity in establishing minimum fee schedules. *Goldfarb* undermines petitioners' argument that a body exercising governmental authority for some purposes is immune from antitrust liability for all of its activities.

In sum, this Court's cases, far from holding that the antitrust laws do not apply to any action by governmental bodies, disclose that the important question is the degree of state involvement in a decision to supplant competition with regulation. A municipality that implements a regulatory measure authorized by the State as part of the governmental power delegated by the States does not violate the antitrust laws.[5] In any other event, however, some further inquiry is necessary.[6]

B. Municipalities acting in a proprietary capacity often should be subject to the antitrust laws

The federal antitrust laws were "designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." *Northern Pacific Ry. Co.* v. *United States*, 356

[5]This principle does not apply when a self-regulatory body that is a governmental body for some purposes exercises its discretion in a manner that may be influenced by private financial considerations. When the action is essentially private the standard generally applicable to private competition should be applied. See *Goldfarb*, *supra*; cf. *Gibson* v. *Berryhill*, 411 U.S. 564.

[6]We believe, however, that a municipality may determine that it will be the sole provider of certain services within its borders without exposing itself to antitrust liability. Similarly, it could offer services at subsidized prices to accomplish public purposes without violating federal law.

U.S. 1, 4. Because of the "felt indispensable role of antitrust policy in the maintenance of a free economy," this Court has repeatedly held that "immunity from the antitrust laws is not lightly implied." *United States* v. *Philadelphia National Bank*, 374 U.S. 321, 348.[7]

The antitrust laws were not intended to preempt regulatory programs carried out by state officials, however, and it therefore is appropriate to construe the antitrust laws to make room for the traditional activity of municipalities engaged in the regulation of private parties. A refusal to recognize any distinction between municipally imposed and privately imposed restraints would interfere with the States' selection of the subordinate public bodies to carry out governmental functions; the States must act through agents, and States have chosen to delegate a significant portion of their regulatory authority to municipal governments. To apply the federal antitrust laws to all municipal decisions would be to hold, in practical effect, that certain state powers are not delegable.

Such a position would be unwarranted. The allocation of governmental power within a State is a matter of state law (*Scripto, Inc.* v. *Carson*, 362 U.S. 207, 210), and a State should be free to allocate governmental authority to its political subdivisions in a manner that it believes best serves the interests of its people. Consequently, when municipalities act in a conventional public regulatory capacity, as the duly authorized representative of the States for such purposes, they are not subject to the federal antitrust laws.

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[7]See also *United States* v. *National Association of Securities Dealers*, 422 U.S. 694, 719-720; *Goldfarb* v. *Virginia State Bar*, *supra*, 421 U.S. at 787; *California* v. *Federal Power Commission*, 369 U.S. 482, 485.

It does not follow from this, however, that the federal antitrust laws do not apply at all to municipal action. This Court has held that "[t]he mere possibility of conflict between state regulatory policy and federal antitrust policy is an insufficient basis for implying an exemption from the federal antitrust laws." *Cantor* v. *Detroit Edsion Co.*, *supra*, 428 U.S. at 596. When a conflict is no more than a contingent possibility, the Court has sought to serve antitrust policy by applying the antitrust laws with due consideration for the competing interests.[8] It should do so here as well.

The policy of preserving to the States the traditional authority they have exercised to regulate their economies does not require granting antitrust immunity to all actions of municipalities and related agencies. The States' regulatory prerogatives may be protected by holding that the antitrust laws do not apply to traditional governmental conduct authorized by a delegation of the State's regulatory authority to its political subdivisons.

Any other rule would require federal policy to yield to a variety of local decisions that may have little to do with an articulable state policy and that may be severely detrimental to the interests protected by federal law.[9] Municipalities are not sovereign in their own right.[10] The Eleventh Amendment does not cloak them with

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[8]See *United States* v. *National Association of Securities Dealers*, *supra*; *Silver* v. *New York Stock Exchange*, 373 U.S. 341.

[9]See *Kurek* v. *Pleasure Driveway and Park District of Peoria*, C.A. 7, No. 76-1791, decided May 26, 1977.

[10]See *Waller* v. *Florida*, 397 U.S. 387; *Hunter* v. *City of Pittsburgh*, 207 U.S. 161; *Atkin* v. *Kansas*, 191 U.S. 207.

immunity to suit in federal court.[11] Municipalities traditionally have been held bound by the same rules as private persons when they engage in business enterprises.[12] Because municipalities never have been treated as equivalents of the States themselves, there is no reason to suppose that Congress would have equated States and municipalities, or hesitated to subject municipalities to suit when they acted in a proprietary capacity.[13]

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[11]See, *e.g.*, *Mt. Healthy City School District Board of Education* v. *Doyle*, 429 U.S. 274.

[12]Kramer, *The Governmental Tort Immunity Doctrine in the United States, 1790-1955*, 1966 U. Ill. Law Forum 795, 815-819; 12 McQuillin, *Municipal Corporations* § 35.35 (1970); 18 McQuillin, *supra*, at § 53.01

[13]Petitioners raise the specter that exposure to treble damage liability would cripple the operations of local governments and chill the exercise of discretion by governmental officials (Br. 20-24). But this argument, whether or not it is correct, would support only immunity from damages and not immunity from injunctions or criminal sanctions in appropriate situations. Injunctions and criminal sanctions have been allowed even in circumstances traditionally considered to call for absolute immunity from damages. See, *e.g.*, *Imbler* v. *Pachtman*, 424 U.S. 409, 429 (prosecutors); *O'Shea* v. *Littleton*, 414 U.S. 488, 503 (judges). Moreover, the question of immunity from damages in exceptional circumstances—a question raised but not decided in *Cantor* v. *Detroit Edison Co.*, *supra*, 428 U.S. at 598-603 (plurality opinion), 614-615 n. 6 (Blackmun, J., concurring)—is not yet presented by this case. The court of appeals remanded the case to the district court to determine the extent to which petitioners' conduct was exempt from the federal antitrust laws, and it would be premature to consider, in advance of the district court's decision, whether petitioners should be required to answer in damages for activity that has not yet been found to be covered by the antitrust laws. Any decision concerning the proper extent of damages liability should take place after the scope of antitrust coverage has been determined, for only then could the potential effects of damages awards upon municipalities and their officials be assessed accurately.

It cannot be said that every act of a city is necessary to the regulatory power of the State, particularly when the city acts in a proprietary capacity. Indeed, cities may act in defiance of the State's policy, and when that happens no state interest is served by withholding application of the federal statutes. Louisiana, in fact, clearly distinguishes a city's action in a proprietary capacity from action in a governmental capacity and exposes cities to liability for proprietary action.[14] There is no reason to conclude that Congress intended some broader immunity for petitioners than Louisiana itself contemplated.

Petitioners contend that the distinction between proprietary and governmental actions of municipalities has lost its vitality,[15] but the argument is overstated. Although the distinction may be unimportant for some purposes,[16] it retains its value for others[17] and has particular force when only statutory rules are involved. Congress and this Court have employed the distinction when dealing with the immunity of foreign nations from suit in courts of

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[14]See *Hicks* v. *City of Monroe Utilities Commission*, 237 La. 848, 112 So. 2d 635; *Vicksburg, S. & P. Ry. Co.* v. *City of Monroe*, 164 La. 1033, 115 So. 136. See also La. Rev. Stat. Ann. § 33:1334(G) (Supp. 1977), which denies municipal joint ventures "immunity • • • from any antitrust laws of the state or of the United States." So far as the State of Louisiana is concerned, then, petitioners are in some respects simply private entrepreneurs that also happen to have governmental functions.

[15]See Reply Br. in Support of Pet. 3-4; Br. 22 n. 17.

[16]See, *e.g.*, *Indian Towing Co.* v. *United States*, 350 U.S. 61, 65.

[17]See, *e.g.*, *National League of Cities* v. *Usery*, 426 U.S. 833, 845 (Congress may not interfere with certain decisions of "States as States," made "in order to carry out their governmental functions"); *id.* at 854-855 and n. 18 (Congress may regulate State activity that is not an integral part of governmental functioning). *National League* distinguished proprietary functions (such as running a railroad) from "those governmental [functions] which the States and their political subdivisions have traditionally afforded their citizens" (*id.* at 855). The provision of electricity is not a traditional function of government. See *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345, 352-353; *Cantor* v. *Detroit Edison Co.*, *supra*.

this country,[18] and, as we have discussed, Louisiana finds it useful when dealing with municipal corporations such as petitioners.[19] Here, as in *Bank of the United States* v. *Planters' Bank of Georgia*, 9 Wheat. 904, 907:

> It is, we think, a sound principle, that when a government becomes a partner in any trading company, it devests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and its prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates, and to the business which is to be transacted.[20]

Petitioners argue that even proprietary activities by municipalities inure to the benefit of the general public and must be controlled exclusively through the democratic process (Br. 23). Whatever force this argument

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[18]See *Alfred Dunhill of London, Inc.* v. *Republic of Cuba*, 425 U.S. 682. See also the Foreign Sovereign Immunities Act of 1976, Pub. L. 94-583, 90 Stat. 2891.

[19]See text and notes at notes 12-14, *supra*.

[20]Every court of appeals that has considered the question after *Goldfarb* has concluded that the antitrust laws reach at least some proprietary conduct by governmental bodies. In addition to the instant case, see *Kurek* v. *Pleasure Driveway and Park District of Peoria*, *supra*; *Duke & Co., Inc.* v. *Foerster*, 521 F. 2d 1277 (C.A. 3). *State of New Mexico* v. *American Petrofina, Inc.*, 501 F. 2d 363 (C.A. 9), upon which petitioners rely, was decided before *Goldfarb* and we submit that, to the extent it is inconsistent with the principles discussed in this brief, it is incorrect. As the Seventh Circuit concluded in *Kurek*, *supra*, slip op. 11: "*Cantor* and *Goldfarb* demonstrate beyond serious questioning that the Supreme Court is not inclined any longer, if it ever was, to accept superficial and mechanical application of a *Parker*-based 'rule' that antitrust inquiry ends upon * * * a finding of governmental actions or laws being involved."

may have when the effects of a municipality's deeds are confined within its geographic borders, it has little bearing on this case. Respondent has alleged that the City of Plaquemine restricted competition outside its borders by denying gas and water to persons who bought electricity from respondent (A. 33-34). The anticompetitive activity alleged here therefore had effects on persons who could not vote in the City's elections, and the residents of the City had every interest to seek to exploit the non-voters much as a private monopolist seeks to profit from nonshareholders.

Even when anticompetitive activity seems to take place within narrow geographic confines, its effects may be felt elsewhere.[21] Unless petitioners' conduct is authorized by and in harmony with legitimate determinations of state policy concerning the role of competition in the delivery of utility service, there is no legitimate reason to exclude it from the coverage of the federal antitrust laws.[22]

Under the principles we have discussed, there is a significant difference between a situation in which a municipality adopts a public regulatory measure to regulate private conduct and a situation in which public officials join in as entrepreneurial conspirators. In the former situation, a showing that the challenged competitive restraint was within the scope of authority delegated by the state would establish a defense; in the latter, the defendants

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[21]See, *e.g.*, *Hospital Building Co.* v. *Trustees of Rex Hospital*, 425 U.S. 738; *Goldfarb* v. *Virginia State Bar*, *supra*, 421 U.S. at 783-785.

[22]When municipalities act as the sole providers of services within their borders, different considerations apply. See note 6, *supra*.

must demonstrate that their conduct was compelled by the State acting as sovereign.[23]

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[23]Petitioners argue that the test would be impossible to apply because it is often difficult to determine the authority of local governments. But there would be no need for resort to explicit legislative history in most instances, and the courts should have little difficulty in concluding that the States delegated to subordinate agencies their traditional powers, even if the grant is ambiguous. When municipalities venture outside the usual governmental realm, however, they will need to be more careful and thoughtful before engaging in potentially anticompetitive actions—the very consequence antitrust policy should encourage.

The Court need not decide in this case whether restrictive conduct by limited-purpose governmental entities should be assessed by the same standards of authorization of the challenged conduct that are appropriate in the case of municipalities. Assumptions concerning the State's intent broadly to delegate authority to municipalities or other general purpose political subdivisions may not be valid with respect to limited purpose political entities. In the latter case, a more specific showing of authorization may be necessary to ensure that federal antitrust policy is not superseded by decisions that do not, in fact, represent the will of the State acting as sovereign. In any event, as indicated *supra* at note 5, where the defendant, though a state agent for some purpose, is also a self-regulatory body, antitrust exemption should only be found where the restrictive conduct is required by the State. See *Goldfarb* v. *Virginia State Bar*, *supra*.

Because this case involves a claim that cities have themselves violated federal law, we express no opinion on the question whether a program of regulation formulated or administered by a city that compels private parties to behave anticompetitively must sometimes yield, under the Supremacy Clause of the Constitution, to the federal policies embodied in the antitrust laws. Cf. *Cantor* v. *Detroit Edison Co.*, *supra*, 428 U.S. at 609-612 (Blackmun, J., concurring); Posner, *The Proper Relationship Between State Regulation and the Federal Antitrust Laws*, 49 N.Y. U. L. Rev. 693, 732-737 (1974).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JOHN H. SHENEFIELD,
Acting Assistant Attorney General.

BARRY GROSSMAN,
CATHERINE G. O'SULLIVAN,
Attorneys.

JULY 1977.